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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

2:14-CR-161-WFN

14 vs.

15 CRAIG ALLEN MORGENSTERN,

16 Defendant.

17 **UNITED STATES' SECOND**
18 **SUPPLEMENTAL NOTICE**
19 **OF EXPERT WITNESSES**
20 **AND RULE 16 SUMMARIES**

21 COMES NOW, Plaintiff, United States of America, by and through Michael C.
22 Ormsby, United States Attorney for the Eastern District of Washington and Stephanie
23 J. Lister and James A. Goeke, Assistant United States Attorneys for the Eastern
24 District of Washington, and respectfully submits the following Second Supplemental
25 Notice of Expert Witnesses and Rule 16 Summaries ("Second Supplemental Notice")
26 to the previously provided Notice of Expert Witnesses and Rule 16 Summaries
27 ("Notice") filed at ECF No.76 and Supplemental Notice of Expert Witnesses and
28 Rule 16 Summaries ("Supplemental Notice") filed at ECF No. 93.¹

¹ The Notice and Supplemental Notice were prepared by the assigned Assistant United States Attorneys. Therefore, the Notice and Supplemental Notice do not

1 **I. Supplemental Notice Generally**

2 The following Second Supplemental Notice is meant to supplement the Notice
3 and Supplemental Notice previously provide defense counsel pursuant to Federal Rule
4 of Criminal Procedure 16(a)(1)(G) relating to individuals who may be called as lay
5 and expert witnesses at trial and the prior Notice is incorporated herein by reference.

6 **II. Forensic Scientist Regarding Drug Identification**

7 The United States recently submitted drug evidence collected in relation to:
8 1) a duffel bag left by the Defendant at a Spokane, Washington residence in October
9 2014; and, 2) drug evidence found in another duffel bag within a vehicle owned by the
10 Defendant for evaluation at the Washington State Patrol (“WSP”) Crime Laboratory.
11 The drug evidence appears at United States’ Trial Exhibit 122 and Exhibit 182.
12 Exhibit 122 was seized from the Spokane residence and Exhibit 182 was seized from
13 the Defendant’s vehicle (a Chevrolet Tahoe). This evidence has been available for
14 inspection and is also identified by Stevens County evidence reference numbers Item
15 1B113 (drugs from Spokane residence) and Item 1B137 (drugs from the Defendant’s
16 vehicle). A WSP Crime Laboratory Report (“WSP Report”) dated February 16, 2016
17 reflecting the forensic examination of this drug evidence by Forensic Scientist Jayne
18 Wilhelm has been provided in discovery. A copy of Forensic Scientist Wilhelm’s CV
19 has also been provided in discovery.

20 As set forth in the WSP Report, the United States expects Forensic Scientist
21 Wilhelm to testify to the identification of various prescription pills noted in the
22 Results and Conclusions section the WSP Crime Laboratory Report from Trial
23 Exhibits 122 and 182. The United States further expects that Forensic Scientist
24
25 contain any adopted statements of the expert witnesses and any questions from
26 counsel should be derived only from reports authored by the proposed experts. The
27 United States remains available to further discuss with defense counsel any matters
28 related to the expected testimony referenced in this notice.

1 Wilhelm will testify regarding her methods and observations as set forth in the
2 Methods and Observations section of the WSP Crime Laboratory Report. In
3 particular, the United States expects that Forensic Scientist Wilhelm will testify that
4 she processed the evidence to separate out non-drug materials in the pills (such as
5 fillers and sugars) and then utilized Infrared Spectroscopy, Gas Chromatography –
6 Mass Spectrometry and Pharmaceutical Identification reference materials to reach the
7 results set forth in the WSP Crime Laboratory Report. In particular, the United States
8 expects that Forensic Scientist Wilhelm will testify that the following items set forth
9 in the WSP report contained Benzodiazepines:

- 10 • Item 1B113-2-7 (temazepam);
- 11 • Item 1B113-2-10 (lorazepam);
- 12 • Item 1B113-2-11 (clonazepam);
- 13 • Item 1B113-2-12 (alprazolam; based on logo identification only);
- 14 • Item 1B113-2-13 (alprazolam);
- 15 • Item 1B137-1 (alprazolam; based on logo identification only and due to
- 16 consistency with Item 1B113-2-12);
- 17 • Item 1B137-4 (temazepam; based on consistency with Item 1B113-2-7);
- 18 • Item 1B137-5 (clonazepam; based on consistency with Item 1B113-2-11);
- 19 and,
- 20 • Item 1B137-9 (alprazolam; based on consistency with Item 1B113-2-13);

21 **III. DNA Examination and Results**

22 The United States supplements the previously provided expert notice
23 concerning Forensic Scientist Ethan Smith of the Washington State Patrol as follows:
24 A final report regarding the DNA testing at issue was provided at 09156-09157
25 (“Final Report”). Based on the Final Report, the United States anticipates that
26 Forensic Scientist Smith will, in addition to all of the matters previously disclosed in
27 the United States’ original expert notice, testify about each conclusion noted in the
28

1 Final Report (which the United States fully incorporates herein by reference). In
2 particular, the United States notes that the Government expects Forensic Scientist
3 Smith to testify that he reviewed the results of the serological testing and made a
4 finding that saliva was detected on the penile swabs obtained from Person D and that
5 the STR DNA typing profile obtained from the penile swabs obtained from Person D
6 established the existence of a mixture consistent with two individuals with the major
7 contributor matching Person D and the minor contributor matching the Defendant.
8 The United States further expects Forensic Scientist Smith to testify that it is 73
9 billion times more likely that the observed DNA profile from Person D's penile swabs
10 occurred as a result of a mixture of Person D and the Defendant than it having
11 originated from Person D and an unrelated individual selected at random from the
12 U.S. population.

13 DATED February 18, 2016.

14 MICHAEL C. ORMSBY
15 UNITED STATES ATTORNEY

16 s/Stephanie J. Lister
17 Stephanie J. Lister
18 Assistant United States Attorney

19 s/James A. Goeke
20 James A. Goeke
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CERTIFICATION

I hereby certify that on, I electronically filed the foregoing with the Clerk of the Court and counsel of record using the CM/ECF System.

s/James A. Goeke
James A. Goeke
Assistant United States Attorney